

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

**LOUISIANA-PACIFIC CORPORATION,)
Plaintiff/Counter-Defendant,)
v.) CIVIL ACTION NO. 3:18-cv-00447
JAMES HARDIE BUILDING PRODUCTS,) DISTRICT JUDGE JON P. McCALLA
INC.,) JURY DEMAND
Defendant/Counter-Plaintiff/Third-)
Party Plaintiff,)
v.)
THE KRUSE BROTHERS, INC.,)
Third-Party Defendant.)**

**DECLARATION OF MARCUS KUIZENGA IN SUPPORT OF
JAMES HARDIE BUILDING PRODUCTS, INC.'S MOTION FOR PRELIMINARY
INJUNCTION AGAINST LOUISIANA-PACIFIC CORPORATION AND THE KRUSE
BROTHERS, INC.**

I, Marcus Kuizenga, declare as follows:

1. My name is Marcus Kuizenga and I have worked at James Hardie Building Products Inc. ("JHBP") for approximately 20 years. My current position at James Hardie is Technical Manager – Legal Department. I am over the age of 21 and am fully competent to testify regarding the facts set forth in this Declaration. I am familiar with the facts and circumstances of the above-captioned proceeding, and make these statements based upon personal knowledge.

2. I am authorized to give this Declaration on behalf of JHBP. These facts stated below are true and correct to the best of my knowledge acquired in my capacity as Technical

Manager-Legal Department, and I would testify to their accuracy in a court of law if called upon to do so.

3. The manufactured siding market is comprised of several types of siding products, including, but not limited to, fiber cement, vinyl, engineered wood, stucco, masonry, and metal composites.

4. JHBP manufactures, advertises, and sells fiber cement siding and backerboard (“Fiber Cement Products”) to both professional and non-professional consumers, including dealers, distributors, building material wholesalers, retailers, lumberyards, builders, developers, contractors, and individual end-users throughout the United States for both residential and commercial construction projects.

5. JHBP’s Fiber Cement Products come in multiple varieties and are sold under a number of brands.

6. JHBP has been in business for over 125 years, and has manufactured fiber cement siding in the United States since at least the early 1990s.

7. Over thirty years ago, JHBP invented its version of fiber cement, which has since evolved to be the leading brand of fiber cement in the United States.

8. JHBP is the largest manufacturer and supplier of Fiber Cement Products sold in interstate commerce to consumers throughout the United States.

9. JHBP has global annual revenues of more than \$1.5 billion,

REDACTED - ATTORNEYS' EYES ONLY

10. Over the last 30 years, JHBP has become the leading fiber cement siding brand in the minds of relevant consumers.

11. JHBP has spent collectively over \$100 million in research and development, and continues its annual research and development investment of approximately \$20 million.

12. JHBP's Fiber Cement Products have undergone rigorous testing, including for proper use in compliance with OSHA regulations, including those governing workplace exposure to respirable crystalline silica dust under 29 CFR 1926.1153.

13. LP competes with JHBP by, among other means, manufacturing and marketing in interstate commerce throughout the United States a line of engineered wood siding products under the SMARTSIDE® brand ("SmartSide Products").

14. LP's SmartSide Products are marketed as alternatives to JHBP's Fiber Cement Products.

15. On information and belief, many consumers and purchasers of manufactured siding, including small to medium sized builders, do not generally have internal engineering or legal staff with knowledge of siding technology and applicable governmental regulations and will rely on the expertise of and information provided by manufacturers, like JHBP and LP, when making purchasing decisions.

16. On information and belief, LP advertises and promotes its SmartSide Products on various websites owned or operated by LP, through trade publications and training programs, and elsewhere throughout the United States.

17. As a manufacturer of siding, LP is aware that siding customers (such as builders, installers, or contractors) use circular saws to cut siding products, including fiber cement siding.

18. Attached hereto as Exhibit 1 is a true and correct copy of the United States Occupational Safety and Health Administration's OSHA® Fact Sheet titled "OSHA's

Crystalline Silica Rule: Construction,” accessible at
<https://www.osha.gov/Publications/OSHA3681.pdf>.

19. Attached hereto as Exhibit 2 is a true and correct copy of a LinkedIn post published by Brad Presley, Marketing Development Manager for LP, dated May 7, 2018.

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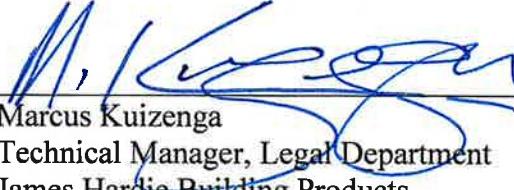
21. Attached hereto as Exhibit 4 is a true and correct copy of the article titled “Silica citations hit 116 in 6 months,” accessible at <https://www.constructiondive.com/news/silica-citations-hit-116-in-6-months/522404/>.

22. Attached hereto as Exhibit 5 is a true and correct copy of LP’s publication titled “Engineered Wood, Winter 2018, Issue 19,” accessible at <https://lpcorp.com/resources/literature-articles/ew-magazine/>.

23. Attached hereto as Exhibit 6 is a true and correct copy of LP’s SmartSide Consumer Brochure, accessible at <https://lpcorp.com/resources/product-literature/brochures-sales-sheets/lp-smartsid-consumer-brochure>.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of July 2018.



Marcus Kuizenga
Technical Manager, Legal Department
James Hardie Building Products

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th day of July 2018, the foregoing was electronically filed. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by U.S. Mail, postage prepaid, and/or hand delivery. Parties may access this filing through the Court's electronic filing system.

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